IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 2611 OF 1996

Keynote Corporate Services Ltd. .. Plaintiff.

v/s.

Gremach Holdings Ltd. ..Defendant.

Mr. C.S. Kapadia i/by Dhru & Co. for the Plaintiff.
None for the Defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 07th June 2005

PC :

1. Mr. Kapadia appearing for the plaintiff invites my attention to the orders passed in summons for judgment taken out in this summary suit. A learned single Judge of this Court had directed the defendant to deposit a sum Rs.1,00,00,000/- (Rs. One Crore) as condition precedent to defend the suit. Against this order, an appeal came to be preferred before a Division Bench of this Court and the Division Bench has modified the said order and directed deposit of Rs. 90 lakhs. A time frame was stipulated under the order of the Division Bench to deposit this amount in court. The amount is not deposited by the defendant in pursuance of this order. The Registrar / Prothonotary and Senior Master of this court has, therefore, issued a non deposit certificate, confirming the defendant’s non

deposit / non compliance of the order dated 16th April, 2004. A loan agreement is the basis of the summary suit. In pursuance of this a cheque for re-payment has been handed over by the defendant to the plaintiff. It is dishonoured on presentation. The amount of the cheque is Rs. 89,25,000/-, on which interest has been claimed at the rate of 18% per annum from the date of the suit till payment or realisation. In my opinion, the provisions of Order XXXVII of the CPC are clear. Opportunity is given to a defendant who files affidavit and prays for leave to defend by disclosing facts which are sufficient to entitle him to defend the suit. In the present case, the second proviso has been invoked and directions to deposit the amount have been issued. The orders and directions have gained finality.

2. In the light of the clear provisions of Order XXXVII, Rule 3 (6)(b) and no application having been made to condone the delay in making the deposit, plaintiff is entitled to a decree and judgment in his favour. Hence, decree as prayed. Certificate of deposit along with the original documents are taken on record and marked ‘X’ collectively. Refund of court fees as well as Advocate’s cost as per the Rules. Certified copy of the decree is expedited.

(S.C.DHARMADHIKARI, J.)

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